

AMENDED IN SENATE JULY 15, 2009

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1521

Introduced by Assembly Member Jones

February 27, 2009

An act to add Section 1359.1 to the Health and Safety Code, and to add Section 10119.4 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Jones. Health care coverage: solicitation.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law regulates the solicitation of health care service plan products and health insurance. Existing law prohibits a plan or insurer from entering into an agreement with an agent, broker, or solicitor that provides for or results in the compensation paid to the agent, broker, or solicitor for the sale of a health care service plan contract or health insurance policy to a small employer or an individual to be varied because of specified characteristics of the small employer or individual.

This bill would prohibit a plan or insurer from entering into an agreement with a solicitor, ~~as specified and including an agent or broker among others,~~ that provides for or results in the compensation paid to the solicitor for the sale or offer of, or application for, an individual health care service plan contract or individual health insurance policy to be varied because of the health status, claims experience, industry, or occupation of the individual ~~and provide for specified compensation rates,~~ *but would authorize the plan or insurer to establish standardized or tiered compensation for a solicitor, as specified. The bill would also specify the compensation rate for a solicitor at the time of renewal of an individual contract or policy or transfer to another individual contract or policy with the same plan or insurer.* The bill would require a plan or insurer, or person or entity representing a plan or insurer, at the time of an individual's application to change to a different individual health care service plan contract or individual health insurance policy, to notify the individual that application for a different contract or policy may result in an offer, an offer for a higher premium, or denial of coverage for that different contract or policy.

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1359.1 is added to the Health and Safety
- 2 Code, to read:
- 3 1359.1. (a) A plan shall not, directly or indirectly, enter into
- 4 any contract, agreement, or arrangement with a solicitor that
- 5 provides for or results in the compensation paid to the solicitor for
- 6 the sale or offer of, or application for, an individual health care
- 7 service plan contract to be varied because of the health status,
- 8 claims experience, industry, or occupation of the individual.

1 ~~However, a health plan may establish solicitor payment rates~~
2 ~~that have the effect of either standardizing commissions or~~
3 ~~providing a lower solicitor compensation level for the sale or offer~~
4 ~~of, or application for, coverage of an individual with a higher risk~~
5 ~~profile than the compensation solicitors receive for an individual~~
6 ~~with a lower risk profile, provided that the commission or~~
7 ~~compensation does not directly or indirectly create an incentive~~
8 ~~based on the health status, claims experience, industry, or~~
9 ~~occupation of the individual. A plan may establish solicitor~~
10 ~~payment rates that have the effect of standardizing or tiering~~
11 ~~compensation for the sale or offer of, or application for, coverage~~
12 ~~of an individual, provided that the standardized or tiered~~
13 ~~compensation does not directly or indirectly create an incentive~~
14 ~~for the solicitor to recommend, offer, or sell based on the health~~
15 ~~status, claims experience, industry, or occupation of the individual,~~
16 ~~or any combination thereof.~~

17 (b) At the time of renewal of an individual health care service
18 plan contract or the transfer to another individual health care
19 service plan contract with the same plan, a plan shall base
20 compensation for the solicitor ~~on the health at the renewal rate~~
21 ~~for the health care service plan contract in which the individual~~
22 ~~will be enrolled after renewal of the current contract or transfer to~~
23 ~~another contract with the same health plan. This subdivision shall~~
24 ~~also apply to a subsidiary or affiliate of the health plan.~~

25 (c) Unless an individual is applying for transfer to a different
26 health care service plan contract pursuant to Section 1389.5, the
27 health plan, or any solicitor representing the health plan, shall
28 notify an individual applying to change individual health care
29 service plan contracts that the application may result in a review
30 of the applicant's medical history that could result in an offer, an
31 offer for a higher premium, or denial of coverage entirely for the
32 different ~~plan health care service plan contract~~ being applied for.
33 The notice required pursuant to this section shall be provided at
34 the time of an individual's application to change to a different
35 individual health care service plan contract.

36 (d) The solicitor shall identify the specific health plan or health
37 plans the solicitor is offering.

38 (e) For purposes of this section, "solicitor" shall have the same
39 meaning as provided in subdivision (m) of Section 1345 and shall
40 include an agent, broker, solicitor, solicitor firm, or any other entity

1 that engages in solicitation as defined in subdivision (l) of Section
2 1345.

3 SEC. 2. Section 10119.4 is added to the Insurance Code, to
4 read:

5 10119.4. (a) A health insurer shall not, directly or indirectly,
6 enter into any contract, agreement, or arrangement with an agent,
7 broker, solicitor, or any other entity engaging in the sale or offer
8 of, or application for, individual health insurance that provides for
9 or results in the compensation paid to the agent, broker, solicitor,
10 or other entity for the sale of a health insurance policy to be varied
11 because of the health status, claims experience, industry, or
12 occupation of the individual.

13 ~~However, a health insurer may establish payment rates for agents,~~
14 ~~brokers, solicitors, or the other entities that have the effect of either~~
15 ~~standardizing commissions or providing a lower compensation~~
16 ~~level for the sale or offer of, or application for, coverage of an~~
17 ~~individual with a higher risk profile than the compensation the~~
18 ~~agents, brokers, solicitors, or other entities receive for an individual~~
19 ~~with a lower risk profile, provided that the commission or~~
20 ~~compensation does not directly or indirectly create an incentive~~
21 ~~based on the health status, claims experience, industry, or~~
22 ~~occupation of the individual. A health insurer may establish~~
23 ~~payment rates for the agent, broker, solicitor, or other entity that~~
24 ~~have the effect of standardizing or tiering compensation for the~~
25 ~~sale or offer of, or application for, individual health insurance,~~
26 ~~provided that the standardized or tiered compensation does not~~
27 ~~directly or indirectly create an incentive for the agent, broker,~~
28 ~~solicitor, or other entity to recommend, offer, or sell based on the~~
29 ~~health status, claims experience, industry, or occupation of the~~
30 ~~individual, or any combination thereof.~~

31 (b) At the time of renewal of an individual health insurance
32 policy or the transfer to another individual health insurance policy
33 with the same insurer, an insurer shall base compensation for the
34 agent, broker, solicitor, or other entity ~~on~~, *as specified in*
35 *subdivision (a), at the renewal rate for the health insurance policy*
36 *under which the individual will be covered after renewal of the*
37 *current policy or after transfer to another policy with the same*
38 *insurer. This subdivision shall also apply to a subsidiary or affiliate*
39 *of that insurer.*

1 (c) Unless an individual is applying for transfer to a different
2 health insurance policy pursuant to Section 10119.1, the health
3 insurer, or any agent, broker, solicitor, or other entity representing
4 the health insurer, shall notify an individual applying to change to
5 a different individual health insurance policy that the application
6 may result in a review of the applicant's medical history that could
7 result in an offer, an offer for a higher premium, or denial of
8 coverage entirely for the different ~~plan~~ *policy* being applied for.
9 The notice required pursuant to this section shall be provided at
10 the time of an individual's application to change to a different
11 individual health insurance policy.

12 (d) The agent, broker, solicitor, or other entity shall identify the
13 specific insurer or insurers the agent, broker, solicitor, or other
14 entity is offering.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.